

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

TERRY L. MILLER

Debtor.

)
)
) CASE NUMBER 18-41588
)
) CHAPTER 13
)
) HONORABLE RUSS KENDIG
)

TRUSTEE'S OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN

NOW COMES Michael A. Gallo, Standing Chapter 13 Trustee, and hereby objects to confirmation of the debtor's Chapter 13 plan dated September 10, 2018. In support of the within objection, the Trustee states as follows:

BACKGROUND

1. On September 10, 2018 the debtor filed a Chapter 13 Plan (Doc. 20).
2. The debtor's plan provides for payments of \$1,548.92 monthly for a term of sixty months and a 100% dividend to be paid to unsecured creditors.

BASIS FOR OBJECTION

A. Failure to Pay.

3. Section 1326(a)(1)(A) of the Bankruptcy Code provides:

§ 1326. Payments

(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—
(A) proposed by the plan to the trustee;

4. The debtor has failed to make payments to the Trustee as required by § 1326(a)(1)(A) of the Bankruptcy Code.

B. Failure to Determine Treatment of Claims.

5. The debtor's Plan lists Columbiana County Treasurer as a secured creditor in the total amount of \$2,573.37.
6. On August 13, 2018, 2018, Columbiana County Treasurer filed a claim in the total amount of \$3,420.40 (Claim No. 2-1).
7. To date, the debtor has failed to either object to the claim or provide the Trustee with direction of how to treat the Columbiana County Treasurer's claim

C. Unsecured Claim Requesting Interest.

8. On August 27, 2018 OneMain Financial filed an unsecured claim in the amount of \$7,059.56 and requested interest of 24.99% per annum. (Claim No. 5-1)
9. Bankruptcy Code § 502(b)(2) prohibits the payment of unmatured interest on general unsecured claims.
10. The debtor has not objected to the payment of interest on the OneMain Financial claim.

D. Interest Rate In Excess of In Re Till of OneMain Claim.

11. On August 27, 2018, OneMain Financial ("OneMain") filed a fully secured claim in the amount of \$25,229.26 with interest at 21.24% per annum (Claim No. 6-1).
12. The debtor's plan provides for the treatment of the OneMain claim as fully secured in the amount of \$24,051.00 with interest of 7% per annum.
13. The debtor has failed to object to the claimed interest rate of 21.24% asserted by OneMain.
14. Pursuant to the United States Supreme Court's decision in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), interest to be paid to secured creditors is a formula approach based upon the current prime national rate of interest plus a risk factor for non-payment. The risk factor

generally used is an additional 2% above the prime rate of interest. (*In re Riley*, 428 B.R. 757(2010)).

E. Failure to List All Creditors.

15. Section 521 (a)(1)(A) of the Bankruptcy Code provides that the debtors shall file a list of creditors.
16. On October 2, 2018, Portfolio Recovery Associates / Victoria's Secret filed an unsecured proof of claim in the amount of \$1,109.50 (Claim No. 15-1).
17. Debtor's schedules do not include Portfolio Recovery Associates / Victoria's Secret as a creditor nor has the debtor instructed the Trustee as to the treatment of the claim.

F. Reservation of Rights.

18. The Meeting of Creditors was originally scheduled for September 12, 2018.
19. The Meeting of Creditors has been rescheduled for October 10, 2018.
20. The Trustee reserves his right to amend the within objection based upon issues which may arise at the October 10, 2018 Meeting of Creditors.

WHEREFORE, for the reasons set forth herein, the Trustee objects to the confirmation of the debtor's plan dated September 10, 2018. In the event the debtor fails to address the matters set forth herein within twenty-one (21) days of the date of the Trustee's Objection, this case may be dismissed without further notice or hearing.

Dated: October 8, 2018

/s/ Michael A. Gallo
Michael A. Gallo, Esq.
Standing Chapter 13 Trustee
5048 Belmont Avenue
Youngstown, OH 44505

CERTIFICATE OF SERVICE

I certify that on October 8, 2018, a true and correct copy of Trustee's Objection to Confirmation of Debtor's Chapter 13 Plan was served:

Via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

Dionis Blauser, Esq., Attorney for Debtor at: dionisb@amourgis.com
Office of the U.S. Trustee at: (Registered address)@usdoj.gov

And by regular U.S. mail, postage prepaid, on:

Terry L. Miller, Debtor, at 5178 Whinnery Road, Hanoverton, OH 44423.

/s/ MICHAEL A. GALLO, TRUSTEE
MICHAEL A. GALLO, TRUSTEE
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